

WAR RISK HAZARDS, EXTEND, AMEND AND
MAKE PERMANENT STATUTES
RELATING THERETO
(DOD 83-220)

DEPARTMENT OF THE AIR FORCE
Washington 25, D. C.

Dear Mr. Speaker:

There are forwarded herewith a draft of legislation, "To amend present provisions of law concerning benefits available to certain civilian personnel for injury, death, or detention resulting from war risk hazards, and for other purposes", and a sectional analysis thereof.

This proposal is a part of the Department of Defense Legislative Program for 1954, and it has been approved by the Bureau of the Budget. The Department of the Air Force has been designated as the representative of the Department of Defense for this legislation. It is recommended that this proposal be enacted by the Congress.

Purpose of the Legislation

The purpose of this proposed legislation is to extend, amend, and make permanent, temporary statutes relating to benefits available to certain civilian personnel for injury, death, or detention resulting from war risk hazards, and to remedy certain inequities and administrative problems which have arisen in connection with past use of those benefits. The temporary provisions of law concerning war risk hazard benefits will terminate July 1, 1954 in accordance with Public Law 100, 83rd Congress, "An Act to continue the effectiveness of the Act of December 2, 1942, as amended, and the Act of July 28, 1945, relating to war-risk hazard and detention benefits, until July 1, 1954".

Under the provisions of the attached draft of bill permanent policy would prevail with regard to the benefits granted to five groups of civilian employees customarily engaged to support the military forces of the United States in overseas areas. These five groups and their relationship to the Government may be identified as follows:

- (a) Direct-hire employees of the United States: individuals employed directly by the Federal Government.
- (b) Persons engaged by contract: individuals engaged under contracts for personal services, under special provisions of law permitting

exceptions from normal civil service appointment and compensation requirements; paid from appropriated funds on contract payment vouchers;

- (c) Employees of contractors: engaged as employees of a private enterprise under laws and other conditions of employment pertinent thereto and paid by the contractor-employer who is under contract with the United States; and,
- (d) Employees of instrumentalities maintained for the mental, physical, and morale improvement of personnel of the Department of Defense and their dependents: engaged as work force for officers clubs, exchanges, motion picture service and similar activities; not regarded as civil service personnel and paid from non-appropriated funds.
- (e) Employees of the American Red Cross.

There is general agreement that a major factor in recruiting competent personnel for overseas duty in any of the above capacities is the protection offered for unusual risk of life or limb. This concern over physical safety remains strong as the result of the fate suffered by civilians employed at Pearl Harbor, Guam, Wake Island and the Philippines. In time of actual hostilities (a retroactive measure), Congress adopted a temporary wartime policy that the United States should assume the liability involved in such risks for certain groups of civilian employees in overseas areas. The experience of the military departments since 1941 indicates need for a continuing and expanded national policy on this subject to be available when the contingency arises. The present state of the law is such that seven different statutes must be consulted in order to establish the various benefits available to the respective categories of civilians serving with the armed forces overseas, and all of these provisions are temporary insofar as war risk hazards are concerned. These seven statutes are cited here for reference purposes as follows:

- (a) Act of September 7, 1916, (39 Stat. 742) as amended (5 U.S.C. ch. 15) (Federal Employees Compensation Act).
- (b) Act of March 4, 1927 (44 Stat. 1424), as amended (33 U.S.C. ch. 18) (Longshoremen's

- (c) Act of August 16, 1941 (55 Stat. 622; 42 U.S.C. 1651ff) (Defense Base Act).
- (d) Act of March 7, 1942 (56 Stat. 143), as amended (50 U.S.C. App. 1001ff) (Missing Persons Act).
- (e) Act of December 2, 1942 (56 Stat. 1028; 42 U.S.C. 1701ff) (so-called War Risk Hazards Act).
- (f) Section 5(b) of the Act of July 28, 1945 (59 Stat. 505; 5 U.S.C. 801).
- (g) Section 4(a) of the Act of July 3, 1948 (62 Stat. 1240; 50 U.S.C. App. 2003) (War Claims Act of 1948).

The Act of June 30, 1953 (Public Law 100, 83rd Congress) amended temporary statutes to extend the effectiveness thereof to July 1, 1954 and to limit coverage to citizen employees only. The limitation of coverage was offered as an amendment to proposed legislation submitted by the Department of Defense and the Department did not express formal opposition to the provision because only a few days remained to get full Congressional action before expiration of the temporary legislation. However, it is the view of the Department of Defense that the limitation imposed by Public Law 100 is too restrictive and should be removed. It is conceded that there is no compelling necessity for the United States to assure coverage or assume liability for injury, death or detention suffered by direct hire employees, by contractors' employees, or by other non-direct-hire employees who are normally residents of the area in which employed. However, where any of these employees, whether United States citizens or aliens, were recruited outside of the area and transported to a station where they would not otherwise live and thereby have been placed in a position of danger, it is considered that protection should be afforded against injury, death or detention from war risk hazards. Therefore, coverage under Titles I and III of the Act of December 2, 1942 should be extended not only to citizens and residents of the United States but also to aliens so long as their conditions of employment are as stated above.

Cost and Budget Data

The fiscal implications of this proposal cannot be estimated accurately since its operation will depend entirely upon contingencies which cannot be forecast.

Sincerely yours,

Inclosures

Honorable Joseph W. Martin, Jr.

Speaker of the House of Representatives

A BILL

To amend present provisions of law concerning benefits available to certain civilian personnel for injury, death, or detention resulting from war risk hazards, and for other purposes.

1 Be it enacted by the Senate and House of Representatives
2 of the United States of America in Congress assembled, That
3 the Act of December 2, 1942, (ch. 668, 56 Stat. 1028), as
4 amended, is further amended as follows:

5 (1) Clauses (2) and (3) of section 101(a) are amended,
6 and a new clause (4) added, as follows:

7 "(2) to any person engaged by the United States
8 under a contract for his personal services outside
9 the continental United States or in Alaska or
10 the Canal Zone; or

11 (3) to any person employed outside the continental
12 United States or in Alaska or the Canal Zone as a
13 civilian employee paid from non-appropriated funds
14 administered by the Army and Air Force Exchange
15 Service, Army and Air Force Motion Picture Service,
16 Navy Exchanges, Marine Corps Exchanges, or any
17 other instrumentality of the United States under
18 the jurisdiction of the Department of Defense
19 and conducted for the mental, physical, and morale
20 improvement of personnel of the Department of

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1 Defense and their dependents; or

2 (4) to any person employed outside the conti-
3 nental United States or in Alaska or the Canal
4 Zone by the American National Red Cross;".

5 (2) Section 101(d) is amended to read as follows:

6 "(d) This section does not apply to any person (1)
7 whose residence is at or in the vicinity of the place
8 where he incurred the disability or the disability re-
9 sulting in death or from whence he was so taken by the
10 enemy, and (2) who was not living there solely because
11 of his employment, unless the injury or the injury re-
12 sulting in death occurred, or his detention began, while
13 in the course of his employment."

14 (3) The last proviso of section 102(a) is repealed. This
15 repeal does not affect cases adjudicated thereunder before
16 the enactment of this Act.

17 (4) That part of section 201(b) preceding the numbered
18 clauses is amended to read as follows:

19 "(b) The term 'war-risk hazard' means any hazard
20 arising during a war in which the United States is engaged;
21 during an armed conflict in which the United States is en-
22 gaged, whether or not war has been declared; or during a
23 war or armed conflict between military forces of any origin,

1 occurring within any country in which a person covered

2 by this Act is serving; from --".

3 (5) Section 201(b) is further amended by changing clause

4 (3) to read as follows:

5 "(3) The discharge or explosion of munitions intended
6 for use in connection with a war or armed conflict with
7 an enemy as defined herein, except with respect to any
8 employee of a manufacturer, processor, or transporter of
9 munitions during the manufacture, processing, or transport-
10 ing thereof, or while stored on the premises of the manu-
11 facturer, processor or transporter; or".

12 (6) Section 201 is further amended by adding the following
13 subsections at the end thereof:

14 "(c) The term 'enemy' means any country, any subject
15 of a foreign country, or any other person serving a foreign
16 country (1) engaged in a war against the United States or
17 any of its allies, (2) engaged in armed conflict whether
18 or not war has been declared, against the United States or
19 any of its allies, or (3) engaged in a war or armed conflict
20 between military forces of any origin in any country in
21 which a person covered by this Act is serving."

22 "(d) The term 'allies' means any nation with which
23 the United States is engaged in a common military effort
24 or with which the United States has entered in a common

1 defensive military alliance."

2 "(e) The term 'war activities' includes activities
3 directly relating to military operations."

4 (7) Title II is amended by adding the following section
5 at the end thereof:

6 "SEC. 208. Titles I and II of this Act may be cited
7 as the 'War Hazards Compensation Act'."

8 SEC. 2. Section 5(b) of the Act of July 28, 1945 (ch. 328,
9 59 Stat. 505), is amended to read as follows:

10 "(b) In any case where an employee of the United
11 States, employed outside the continental United States
12 or in Alaska or the Canal Zone, covered by the Federal
13 Employees' Compensation Act, as amended, or any extension
14 thereof, is disabled or dies from a war-risk hazard (as
15 defined in section 201(b) of the War Hazards Compensation
16 Act), or from capture, detention or other restraint by an
17 enemy (as defined in section 201(c) of the War Hazards
18 Compensation Act), the disability or death shall, for the
19 purposes of such Act, be considered to have resulted from
20 injury occurring while in the performance of duty, whether
21 or not the employee was engaged in the course of his em-
22 ployment when the event occurred. This subsection does not
23 apply to a person (1) whose residence is at or in the
24 vicinity of the place where he incurred the disability

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1 or the disability resulting in death or from whence he

2 was so taken by the enemy and (2) who was not living
3 there solely because of his employment, unless the injury,
4 the injury resulting in death, or the taking occurred
5 while in the course of his employment. Compensation may
6 not be paid to the disabled person or to a dependent for
7 any period during which such person or dependent is en-
8 titled to other pay, benefit, or gratuity from the United
9 States for the same detention by the enemy, or for the
10 same death or disability, unless the other pay, benefit
11 or gratuity is repaid or renounced."

12 SEC. 3. Section 1 of the Act of August 16, 1941, (ch. 357,
13 55 Stat. 622), as amended, is amended as follows:

14 (1) That part of subsection (a) preceding the numbered
15 clauses is amended to read as follows:

16 "(a) Except as herein modified, the provisions of
17 the Longshoremen's and Harbor Workers' Compensation Act,
18 as amended, apply to any employee of the American National
19 Red Cross, and to any employee engaged in any other em-
20 ployment".

21 (2) Clauses (1) and (2) of subsection (a) are respectively
22 amended by striking out the word "or" at the end thereof.

23 (3) Clause (3) of subsection (a) is amended by striking
24 out the words "upon any public work", and by adding the

1 word "or" at the end thereof.

2 (4) Clause (4) of subsection (a) is amended by striking
3 out the words "for the purpose of engaging in public work"
4 and "engaged in such public work".

5 (5) Subsection (b) is repealed.

6 (6) Subsection (e) is amended by striking out the words
7 "public work" and substituting the word "employment".

8 (7) A new sentence is added at the end of subsection (e)
9 as follows:

10 "Upon the recommendation of the American National
11 Red Cross, the Secretary of Labor may waive the
12 application of this section to any employee or
13 class of employees of the American National Red
14 Cross, or to any place of employment of such an
15 employee or class."

16 (8) Subsections (c), (d), and (e) are relettered as (b),
17 (c), and (d) respectively.

18 SEC. 4. The Act of August 16, 1941, (ch. 357, 55 Stat.
19 622), as amended, is further amended as follows:

20 (1) Section 4 is amended by inserting immediately
21 after the words "approved September 7, 1916 (39 Stat. 742),
22 as amended" the additional words ", or subject to the pro-
23 visions of the Act entitled 'An Act to confirm the status of
24 certain civilian employees of nonappropriated fund instru-
25 mentalities under the Armed Forces with respect to laws

1 administered by the Civil Service Commission, and for
2 other purposes,' approved June 19, 1952 (ch. 444,
3 66 Stat. 138)".

4 (2) A new section 5 is added at the end thereof,
5 as follows:

6 "SEC. 5. This Act may be cited as the
7 'Defense Bases Act'."

8 SEC. 5. Sections 1, 3, 4, and 5 of the Act of June 30,
9 1953 (ch. 176, 67 Stat. 134) are repealed and section 101(c)
10 of the Act of December 2, 1942 (ch. 668, 56 Stat. 1030) is
11 re-enacted.

12 SEC. 6. This Act has no retroactive effect.

SECTIONAL ANALYSIS

Section 1 - Amends the Act of December 2, 1942 - War Risk Hazards Act - (42 U.S.C. 1701) to extend war risk hazard benefits to certain persons not now covered, and to make that Act operative during the period of any war or armed hostilities. These objectives are realized through the following changes:

Section 1(1) - The clause "civilian employee of a post exchange or ship-service store" in the present law is altered to read "civilian employee paid from non-appropriated funds administered by the Army and Air Force Exchange Service, Army and Air Force Motion Picture Service, Navy Exchanges, Marine Corps Exchanges, or any other instrumentality of the United States under the jurisdiction of the Department of Defense and conducted for the mental, physical, and morale improvement of personnel of the Department of Defense and their dependents," so as to include other persons occupying a position with relation to the Department of Defense which is identical to that of post exchange employees. Coverage of the Act is also extended to include employees of the American Red Cross. Territorial coverage provisions have been drafted to correspond with related statutes but the scope in respect thereto is unchanged.

Section 1(2) - Removes the present restriction prohibiting coverage of employees who are citizens of the United States for disability or death after capture, detention, or restraint by an enemy of the United States, if they were residing in the vicinity of the place from whence they were taken and who were not living there solely by virtue of the exigencies of their employment, unless taken while engaged in the course of employment.

Section 1(3) - Section 102(a) of the Act was amended by section 4(c) of the War Claims Act (50 U.S.C. App. 2003) by, among other things, providing that any amendment to the Longshoremen's and Harbor Workers' Compensation Act increasing the amount of benefits thereunder should be applied to awards under the Act, retroactive to the time of injury or death. That provision gives unusual treatment for one class of beneficiaries. This amendment repeals that provision and provides further, that cases adjudicated prior to enactment of this Act shall not be affected.

Section 1(4) - The term "war-risk" hazard is defined herein and the July 1, 1954 expiration date (P. L. 100, 83rd Congress) of the Act is deleted in favor of a provision making benefits available when disability, death, or detention results from any war, or armed hostilities created by military encounters.

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Section 1(5) and (6) - Defines the terms "enemy", "allies", and "war activities" made necessary for the purpose of this Act by reason of the present activities of the United States under the United Nations organization.

Section 1(7) - Provides that Titles I and II of the Act of December 2, 1942, (ch. 668, 56 Stat. 1028), as amended, may be cited as the War Hazards Compensation Act.

Section 2 - Amends section 5(b) of the Federal Employees' Compensation Act (5 U.S.C. 801) so as to extend to civil employees of the United States the same war-risk hazard and detention benefits afforded individuals under the proposed amendments to the Act of December 2, 1942 (War Hazards Compensation Act) and removes the present limitation of the application benefits under the Act to "during the present war and until July 1, 1954."

Section 3 - Amends section 1 of the Act of August 16, 1941 (Defense Bases Act, 42 U.S.C. 1651) to extend to employees of the American Red Cross the injury or death benefits of the Longshoremen's and Harbor Workers' Compensation Act, and extends coverage to other employees under Government contract by deleting the restriction as to employment on public works.

Section 4 - Amends section 4 of the Act of August 16, 1941 (42 U.S.C. 1654) to exempt from the provisions of that Act civilian employees subject to nonappropriated fund instrumentalities subject to the Act of June 19, 1952 (66 Stat. 138). A new section 5 is added to the Act of August 16, 1941 to provide a short title for that Act (Defense Bases Act).

Section 5 - Repeals sections 1, 3, 4, and 5 of Public Law 100, 83rd Congress which extended war-risk hazard and detention benefits until July 1, 1954 and re-enacts section 101(c) of the Act of December 2, 1942 concerning war-risk hazard benefits for certain alien employees.

Section 6 - Provides that this legislation has no retroactive effect.

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